IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11748 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

AMRISHBHAI DORILAL SHARMA

Versus

STATE OF GUJARAT

Appearance:

MR CL SONI for Petitioner No. 1

Mr.V.M. Pancholi, Assistant GOVERNMENT PLEADER, for Respondent No. 1,3-4

MS PJ DAVAWALA for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/02/2003

ORAL JUDGEMENT

The petitioner is a detenu, who has challenged his detention order dated 29.4.2000, by which he is detained under the Prevention of Black Marketing and

Maintenance of Supplies of Essential Commodities Act, 1980 ("PBM", for short). Along with the detention order, the petitioner is also served with the grounds of detention.

In the grounds of detention, it is mentioned that the petitioner is illegally diverting the quantity of solvent, even though the same is only meant for industrial use. It is also mentioned in the grounds that, at the time of raid organised by the Police Inspector, the petitioner was caught red-handed with 27 barrels, containing 5400 litres of solvent. Under the circumstances, the authority was of the opinion that the petitioner is dealing illegally in solvent and, therefore, he was detained under PBM. The said detention order is impugned in the present petition.

The detention order is dated 29th April, 2000. However, the same was executed on 13.11.2002. Learned AGP submitted that since the petitioner was not traceable, this delay in executing the order has taken place. As against that, Mr.Soni, learned Advocate for the petitioner, submitted that in connection with the aforesaid case, the Police had already arrested the petitioner and he was subsequently released on bail by the competent court and after his release from custody, this detention order was passed. He submitted that the petitioner was not absconding. Otherwise, his bail would have been easily cancelled on that ground. It is argued on behalf of the petitioner that even though the petitioner was arrested initially by the Police, and even though he was subsequently released on bail, the detaining authority has not at all considered the aforesaid aspect in the order. The fact that the petitioner was already arrested by the Police prior to his detention order is not in dispute. Even the fact that subsequently, he was released on bail by the competent court is also not in dispute. However, this fact is not all reflected in the order passed by the detaining authority. In fact, before passing the detention order, the detaining authority has also recorded the statements of the petitioner in connection with the alleged incidents. In paragraph 11 of the detention order, it is mentioned that the charge-sheet has been filed on 21.3.2000. However, it is mentioned that since there is a provision for releasing the petitioner on bail, after being released, he may again continue the said activity. The said aspect is reflected in paragraph 11 of the detention order. However, it is required to be noted that the petitioner was already arrested prior to that and subsequently, he was released

on bail by the competent court. This aspect is not highlighted in the order. Apart from the aforesaid fact, Advocates of both the sides have pointed out that so far as the offences punishable under Sections 3 and 7 are concerned, they are not bailable. Still, the detaining authority has mentioned that there is a provision for releasing the petitioner on bail. It seems that there is total non-application of mind as regards the fact that the petitioner was arrested and released by the competent court. Even necessary papers about the order granting bail to the petitioner are not forming part of the papers prepared by the Sponsoring Authority and forwarded to the Detaining Authority. However, the Detaining Authority has not applied its mind on this aspect and considering the fact that the petitioner was arrested and subsequently was already released on bail, which is not reflecting in the order passed by the detaining authority, the order of detention is required to be set aside on that ground.

Even as per the chargesheet, copy of which is given to the petitioner, along with the bunch of papers, the petitioner was arrested on 30.12.1999 and was sent to judicial custody. Even though copy of the chargesheet was given by the detaining authority to the petitioner, in the detention order, there is no reference about the same in any manner. Copy of the chargesheet is placed on record by Mr.Soni, learned Advocate for the petitioner, at the time of hearing of this petition.

In the above view of the matter, the petition requires to be allowed.

This petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the petitioner be released forthwith unless he is required in connection with any other case. Rule is made absolute.

13.02.2003 (P.B. Majmudar, J.)

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(apj)